

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 17, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Mary Bills, Jon Carlson, Steve Duvall, Linda Hunter, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Gerry Krieser absent); Kathleen Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Becky Horner, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held October 3, 2001. Duvall moved approval, seconded by Bills and carried 7-0: Carlson, Duvall, Hunter, Newman, Schwinn, Steward and Taylor voting 'yes'; Bills abstaining; Krieser absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

October 17, 2001

Members present: Bills, Carlson, Duvall, Hunter, Newman, Schwinn, Steward and Taylor; Krieser absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3336; CHANGE OF ZONE NO. 3342; SPECIAL PERMIT NO. 1935; SPECIAL PERMIT NO. 1936; SPECIAL PERMIT NO. 1938; FINAL PLAT NO. 01024, MORNING GLORY ESTATES ADDITION; ANNEXATION NO. 01003; and CHANGE OF ZONE NO. 3314.**

Steward moved to approve the Consent Agenda, seconded by Hunter and carried 8-0: Bills, Carlson, Duvall, Hunter, Newman, Schwinn, Steward and Taylor voting 'yes'; Krieser absent.

Note: This is final action on Special Permit No. 1936; Special Permit No. 1938; and Morning Glory Estates Addition Final Plat No. 01024, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3332
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
PRELIMINARY PLAT NO. 01011,
ROLLING HILLS 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 33RD BETWEEN W. PLEASANT HILL RD.
AND W. DENTON RD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 17, 2001

Members present: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Staff recommendation: Conditional approval

Proponents

1. Mark Hunzeker appeared on behalf of the developer. This is a change of zone and preliminary plat for an acreage area in a vicinity which is already largely developed with acreages. It is in an area shown for acreage development in all of the potential land use plans that have been considered by the Comprehensive Plan Committee. In Hunzeker's opinion, there is virtually no chance that over the next planning period this area would be incorporated into the city limits. This is an ideal spot for additional acreage development and he believes the staff agrees, except for one issue.

The developer is proposing to take an access from existing roadways which abut this 80 acre parcel from both the north and the south. The developer is not showing a connection to S.W. 40th. Hunzeker believes this is acceptable to the County Engineer who has primary responsibility for roads inside the three-mile limit but outside the city limits. The County Engineer is responsible for maintaining these roads and has expressed no objection to not extending a street onto S.W. 40th. Hunzeker also submitted that this is consistent with the general desire of engineers in both the city and county, i.e. not to have too many access points onto the section line roadways. The staff report requires the developer to relinquish access to all their lots onto S.W. 40th, and is being asked to make a road extension out to S.W. 40th because it creates a block length which exceeds the maximum allowed in the subdivision ordinance. Hunzeker purports that the block length is more of an issue in an urban environment. He does not believe it is a concern in a situation such as this where we have only a handful of lots that will be affected one way or the other in terms of getting back out to S.W. 40th, and they can do so through existing platted roads and at the same time minimize the number of access points on the section line road.

Hunzeker requested the Commission to delete Condition #1.1 (which requires a street connection from S.W. 40th to S.W. 38th) and to amend Condition #2.2 to read: "An exception to the design standards to permit block length in excess of 1320 feet for Blocks 1 and 2."

Hunzeker went on to state that this is a very straight forward plat. The only issue is the conflict between the county and the city's view of how important this access might be. If it were an urban setting, Hunzeker agrees that the requirement would be legitimate, but in this case, it is one that in judgment you can determine is not necessary.

Carlson inquired why the developer did not choose to connect to S.W. 34th Street. Hunzeker stated that the primary reason is that S.W. 34th is not paved nor is Pleasant Hill Road from S.W. 33rd to S.W. 34th. Rather than have a section where we were taking access into the subdivision via a gravel road for basically two lots, we simply decided to cul-de-sac and leave it a gravel cul-de-sac. We will be paving the interior roadways and it just seemed like a more consistent approach to control the dust coming through the subdivision. The graveled roads are in good condition.

Carlson inquired whether there are any topographical problems on the west side of the lot for a street connection. Hunzeker stated that it is not a physical constraint at all. The problem is that it takes additional land out of a pair of lots to construct a road which is unnecessary and adds additional expense and cost to those lots.

Opposition

1. Phil Corkill, 3110 W. Pleasant Hill Road, appeared on behalf of the Hitching Post Hills Neighborhood Association in opposition to waiving the access to S.W. 40th. The developer is consenting to pave from West Blue Grass to Pleasant Hill. Instead of putting a road out to S.W. 40th, they are incurring more costs to do that paving. Corkill believes the developer could connect to S.W. 40th and relinquish paving S.W. 33rd to Pleasant Hill Road. If they would like to pave S.W. 40th to Denton, it would connect the subdivisions with paved traffic. The cul-se-sac area is a real sunken hole. When Pleasant Hill Road was extended to S.W. 34th, there was quite an area that had to be filled in.

2. Dianne Keech, 6740 S.W. 38th Street, testified in opposition. The north border of their land is this development. She is concerned about adequate water for 23 more private wells. We have had some years of drought and are concerned about our own wells. Another concern is that her property experiences a major run-off and erosion problem from this site when there is a rainfall. She contacted the NRCS who inspected the site and said only the owner of this land could solve the erosion problem. She does not see anything

on this plat that addresses that issue. In addition, the traffic from this subdivision will funnel right past her home, rather than accessing from S.W. 40th. She is also concerned about lagoons—how close they will be, what they will look like and screening. She is wondering whether there will be adequate covenants in the neighborhood against noise, structures, animals, odor, etc.

Staff questions

Carlson asked staff to address the concern about drainage. Mike DeKalb of Planning staff advised that the applicant did provide a grading plan which was reviewed by Public Works and the County Engineer. The property is currently farm ground. It does meet the drainage detention standards. They are not asking for a waiver.

Carlson asked staff to respond to the access to S.W. 40th street. DeKalb noted that the County Engineer's written response does not acknowledge that they agree to this waiver. It is a design standard of the subdivision ordinance to have cross-streets every 1320 ft. Both the 80 acres to the north and to the south did meet that requirement by providing a connection to S.W. 40th. The staff is asking that this standard be applied equally. Public Works noted no engineering reason to grant this waiver. DeKalb does not believe the developer would lose a lot by constructing this road access.

Other than not having engineering reasons to justify the waiver of the block length, Steward wondered whether there are some locational and fire equipment access issues. One of the big issues in many of our acreage developments is emergency access. DeKalb responded that the design standard is established with good reason and the discussions have been towards the continued concern about connectivity and multiple access points. The staff is opposed to granting the waiver of block length.

DeKalb addressed the issue of groundwater, stating that this is an area of good groundwater and good wells with no known problems. In regard to paving, it is discretionary and not required on this size of lot. The county has paved W. Pleasant Hill Road. The subdivision immediately to the north is gravel and the County Engineer has agreed that extending the pavement in the cul-de-sac is extraneous when the rest is gravel.

Phil Corkill gave additional testimony regarding the water issue. He is disputing the quality of the water. There is some instance of salt water by drilling too deep or over-pumping. The addition to the south used to have an irrigation well for crops and he has never had official word from anyone, but he believes the reason they quit irrigating was because the water had fouled. If the water does foul and the water level goes down, what happens next? Who is responsible? What is the corrective action at that point?

Response by the Applicant

Hunzeker responded to the opposition, stating that this plat will not change any of the drainage patterns in this area. This application meets all the drainage criteria of the ordinance. With respect to groundwater, one of the requirements prior to a final plat is that we do the test wells that are necessary before final platting and selling lots. As indicated by Health, this is an area that has been identified as having good groundwater. Hunzeker suggested that domestic use of 24 homes is much less likely to cause a problem than potential agricultural use. They do not intend to use lagoons, but will have septic systems on all lots. There will be restrictive covenants but he did not know how they would compare with the other subdivisions; however, the covenants for this subdivision would be in keeping with the development in the area.

Hunzeker also pointed out that Pleasant Hill Road as it abuts this project is currently a dedicated half street. This developer is dedicating the other half of that street and it may be low because it has not been graded all the way through and there may be some dirt work that needs to be done in accordance with county standards.

As to the waiver of block length, Hunzeker agreed that the County Engineer has not affirmatively agreed with the waiver, but the comments also do not say that they should put a connection in. The irony of this is that the requirement to make the connection comes from the city side; however, if we were in the city, making this connection would put three access points to S.W. 40th Street closer together than Public Works would ordinarily allow in the city. Hunzeker believes it is a judgment call. This subdivision has plenty of access via public roadways. And he does not see a lot of traffic going in those directions when they have access internally on paved roads back to a paved road at S.W. 33rd and to a paved road that goes east, i.e. Pleasant Hill Road. He does not believe there will be a lot of traffic going north and south on S.W. 38th Street.

Hunter asked Hunzeker if they would lose any lots by making the connection to S.W. 40th Street. Hunzeker concurred with staff that it does not reduce the number of lots—it is a matter of additional cost to those lots.

Public hearing was closed.

CHANGE OF ZONE NO. 3332

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Duvall moved approval, seconded by Carlson and carried 8-0: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

PRELIMINARY PLAT NO. 01011
ROLLING MEADOWS 1ST ADDITION

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Steward moved approval of the staff recommendation of conditional approval, as set forth in the staff report dated October 2, 2001, seconded by Carlson.

Duvall made a motion to amend to delete Condition #1.1 and to amend Condition #2.2, as requested by the applicant, seconded by Schwinn.

Duvall believes the applicant's points are good and he does not see why the design standards couldn't allow this revision.

Schwinn also supports the amendment because he likes the fact that the connectivity was created between the other two neighborhoods. When on a paved road in the country such as West Denton Road at high speed, if we eliminate accesses it creates a safer situation.

Carlson stated that he would vote against the amendment because he believes in connectivity. He appreciates that they have connected to the subdivision to the south, but he agrees with the neighbors. There are probably 8 lots on the west side that will find it more convenient to use S.W. 38th up to S.W. 40th. A lot of times you hear neighbors worried about connections, but the net result is a better experience. The more connections you have, the more ways you have to move traffic and the slower the traffic.

Steward agreed with Carlson. The neighbors live in a subdivision that is connected on both ends east and west and this plat should be treated similarly.

Motion to amend failed 2-6: Duvall and Schwinn voting 'yes'; Carlson, Steward, Hunter, Taylor, Newman and Bills voting 'no'; Krieser absent.

Main motion for conditional approval as set forth in the staff report, with no amendments, carried 8-0: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

SPECIAL PERMIT NO. 922E
TO EXPAND AN AUTO SALVAGE YARD
ON PROPERTY LOCATED AT
NO. 35TH CIRCLE COURT AND GLADSTONE AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 17, 2001

Members present: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Staff recommendation: Revised from deferral to conditional approval on October 17, 2001.

Becky Horner of Planning staff advised that the wetland information has been provided by the applicant and the staff is now recommending conditional approval, with amendment to Condition #2.1.8: ~~"Provide information of~~ Existing wetlands in the expansion area."

Proponents

1. Brian Carstens appeared on behalf of **Olston's Import Auto Salvage**, the applicant. This is the fifth and last expansion of this salvage yard. The area proposed for expansion abuts No. 33rd Street, which is platted but presently not improved. Olston's will be leasing some property from the city and NRD (the right-of-way of Hartley and the west half of the old Salt Creek channel). The applicant had originally requested a street and alley vacation, but has instead agreed to enter into a lease agreement with the city. At the time the right-of-way is determined for the Antelope Valley project and put through, this applicant will agree to "pull the special permit back" and give up the leased land.

Carstens requested that Condition #2.1.7 be revised: "Provide a landscape plan showing screening required by the Design Standards ~~and showing existing and proposed street trees for N. 33rd Street.~~"

Carstens confirmed that the applicant will not be bringing in any additional fill to this site.

Carlson inquired about the operation of the salvage yard and how it will change after Antelope Valley. Carstens stated that it will operate as a salvage yard to the time of Antelope Valley, and when Antelope Valley comes through, the fences will be pulled back and the special permit will be amended to allow for the No. 33rd Street right-of-way. Carlson wondered what the roadway aesthetic will be at that time. Carstens stated that Olston's has a 6' screening fence that will have to be relocated. The access to Olston's is on 35th Street. There will be no direct access to 33rd Street.

Hunter wondered whether the Antelope Valley issue should be a condition of approval on this special permit. Becky Horner of Planning staff clarified that the property will be leased and

the city will end the lease at the time the Antelope Valley roadway comes through. It is not necessary to be a condition of approval.

Opposition

1. Danny Walker testified in opposition. His concern is sufficient tie-downs for the salvage vehicles because the city impound lot does not have sufficient tie-downs.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Bills moved to approve the Planning staff revised recommendation of conditional approval, with the amendment to Condition #2.1.8, and with the amendment to Condition #2.1.7 as requested by the applicant, seconded by Carlson and carried 8-0: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

SPECIAL PERMIT NO. 1939

FOR A HEALTH CARE FACILITY

ON PROPERTY LOCATED AT

SOUTH 91ST STREET AND PINE LAKE ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 17, 2001

Members present: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Staff recommendation: Deferral, revised to conditional approval on October 17, 2001.

Jason Reynolds of Planning staff explained that the staff recommendation of deferral was based on the fact that Public Works had not received an intersection study that would document the impact of this development on the intersection of So. 98th and Heritage Lakes Drive. Subsequent to the issuance of the staff report, the applicant submitted the study satisfactory to the Public Works Department. Reynolds submitted a revised staff recommendation of conditional approval, with revised conditions.

Proponents

1. Mark Hunzeker appeared on behalf of **Nebraska Heart Institute**, the applicant. This application is for the establishment of a specialty heart hospital at the vicinity of 91st and the

proposed Heritage Lakes Drive, directly across the street east of the shopping center recently approved at 84th & Hwy 2, extending eastward to 91st Street. This project will provide for enhanced patient care and choice through the use of specialized personnel and will be able to increase the total number of heart procedures performed in Lincoln. All Nebraska Heart Institute physicians intend to continue their practice at Bryan and St Elizabeth as well as the new proposed facility.

Hunzeker advised that the facility will be a 68,000 sq. ft. hospital, with potential to expand to 95,000 sq. ft. It will have a small emergency room which will not participate in the regular 911 emergency room locations. They are also showing a helicopter pad which is expected to be used primarily for the use of transporting hearts for transplant procedures. The physician office building is shown as a 40,000 sq. ft. building; however, in discussions with staff and the review of the traffic impact analysis, it has been determined that the 40,000 sq. ft. is larger than is ever likely to be necessary and by reducing the size from 40,000 sq. ft. to 30,000 sq. ft. they were able to reduce the traffic impact to a complete wash relative to what it would have been as a residential project. There will be virtually zero impact on traffic at this location as a result of this change in land use. The initial phase will likely be less than 20,000 sq. ft. The floor-to-area ratio (FAR) in the initial phase will be less than .1. The FAR at full buildout will be .14. The Comprehensive Plan allows .25.

Hunzeker pointed out that there are no waivers being requested. This application conforms to all regulations. The only real issue raised with staff is whether we meet the terms of the special permit ordinance and the only substantive terms were whether or not we were readily accessible to the area served and located near the center of the area to be served. "We are"-NHI serves a patient market centered in southeast Nebraska. This is an ideal location and virtually at the center of the marketplace that NHI serves.

Hunzeker reiterated that the traffic study has been submitted and shows that there will be no increase in traffic as a result of this project. The only real issue is whether or not this is an appropriate land use for this site and whether this site plan conforms to design standards. Hunzeker believes that the staff has adequately documented that this application does conform to the design standards and the ordinance requirements and the applicant has no objection to any of the conditions of approval.

Hunzeker also stated that the applicant has experienced outstanding cooperation from the staff and the Mayor's office on this project.

Steward commented that every indication in this community, both by recent population growth as well as growth and demand for health care, indicates it is a growth industry and he is assuming the parcel of land and the site planning envisions some potential growth. Hunzeker responded, stating that they are building adequate expansion for the physician office building into the initial phase as well as a nearly 50% expansion of the hospital itself. They are working

with the property owner and prospective developer of the residential subdivision to the north and to the east to make sure that there is a smooth interface. The area east of the road that runs behind the hospital is being reserved, at least in theory (this is a concept that has not reached a point where we could put it on paper), for townhouse type short term stay apartments for families of patients of the hospital backing up to the residential area to the east. This applicant does not look at the area to the east as being hospital expansion but there might be a future request for some residential type structures that would be used for family stays.

Hunter commented that because of the approvals on the surrounding properties, the transition to this property concerns her, and with residential around there and a helicopter pad, she is wondering about the impact on that neighborhood. Hunzeker showed the map explaining the separation between the cul-de-sac and the helicopter pad. They do not expect the helicopter pad to be used very often because it will only be used to transport hearts for transplant. It will not be hauling trauma patients in. They do not expect it to be a big intrusion. The residential developer to the east knows about it and is comfortable. Hunter sought confirmation that the helicopter pad will not be used to transport an ER heart patient. Hunzeker agreed that it is possible, but the main purpose is for the transplant transport. The developer of the property to the east has developed almost exclusively high-end townhomes and single family developments, so they are familiar with what people who are spending a lot of money have in the way of expectations of their surroundings. They will not neglect to mention the fact that there will be a helicopter pad there when they sell the homes.

There was no testimony in opposition.

Staff questions

Carlson noted that the parking analysis states that the proposed screening does not meet design standards. Jason Reynolds of Planning staff advised that that issue is addressed by Condition #2.1.2: "A landscape plan approved by the Director of Planning with plant materials acceptable to Parks & Recreation".

Carlson also inquired about the elevations or maximum heights of the buildings, etc. Reynolds explained that with a health care facility by special permit, the required yards are determined by the height of the buildings. This application will not have a problem meeting that standard, but the conditions do require the information indicating how high the building is so that the required setback can be determined.

Carlson asked staff to respond to the trail issue. Reynolds demonstrated that the trail will run from “somewhere up in here” and meander along the east side of 91st Street along the property and then follows the “S” of 91st Street and connects at Hwy 2. Eventually the hope is to create some sort of grade separated crossing at Hwy 2. Carlson wondered whether the trail will take traffic from the residential uses north and east of the heart hospital to the mixed use area. Reynolds stated that there will be sidewalks leading across the mixed use area so you could cross at any of the intersections with 91st Street. The 10’ wide trail does not continue into the mixed use center. The bike trail is intended to connect south toward the park.

Carlson asked staff to address the staff analysis as it relates to the approved subarea plan and the intention of the subarea plan. Reynolds noted that the subarea plan indicates that there may be special residential areas that are not specifically designated and which would come in by special permit. In review of this special permit application, it was determined that it met or exceeded the requirements for health care facilities. Carlson wanted an analysis regarding the provision of potential for integrating uses in the subarea plan. What is the sense of the function as a whole within the subarea? Reynolds suggested that the subarea plan was developed with the aid of an overall traffic study. With the numbers that the applicant has provided for this use they are actually 2 trips lower in terms of demand on the road network than would be required had this developed as townhouses. Carlson wondered whether the end result is the hope to provide easy access into and out of the mixed use center from a residential component. Is this road network helping to facilitate that? Reynolds stated that the Heritage Lakes Drive alignment is as shown in the submitted preliminary plat and it connects with the drive on the west side of 91st within the shopping center. This application does not affect the alignment of streets at all.

There was no rebuttal by the applicant.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**October 17, 2001**

Steward moved to approve the revised staff recommendation of conditional approval, as set forth in the memorandum dated October 17, 2001, seconded by Bills.

Carlson stated that he is in favor of the use and even though designed in the subarea plan as residential, he believes that a hospital is an appropriate residential special permitted use. However, he has a continuing concern – we have subarea planned this area; the ink is barely dry; and he does not want to ignore it. He acknowledges that it is not possible to come forward showing every single footprint, house, etc., but on the other end of that spectrum, he

does not want piecemeal decisions ending up with a product which is no where near what we wanted, i.e. a neighborhood integrated mixed use center. If things continue to come in bit by bit, he is fearful that we will miss the opportunity for integration. He can see that this hospital can function in this spot, but he does not want this to turn into a trapshoot.

Steward believes Carlson's concern is well-founded for process. However, in this case it seems that it is a good and appropriate transition zone use between the commercial area and housing. He would have been more concerned if we had a permit bringing housing that much closer to the commercial area. He likes the description by the applicant's representative about transitional housing relating to the hospital use. He does not think the subarea planning process is any different than our master planning process and we have to remain flexible and consider good applications when they come forward. Steward believes this is a good one.

Hunter stated that she has no opposition to the facility itself. She remains somewhat concerned about the helicopter noise, but she is also cognizant of the other medical facilities in the area which are very nice additions for special use centers.

Schwinn believes this is a good use and he actually appreciates seeing these uses come before the residential component. The people who buy residences in the area will know what is going to be there. This is a very quiet use in a neighborhood.

Motion for conditional approval carried 8-0: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

CHANGE OF ZONE NO. 3328

TEXT AMENDMENT TO THE ZONING ORDINANCE

REGARDING DWELLINGS FOR NON-RELATED PERSONS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 17, 2001

Members present: Carlson, Steward, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser absent.

Jason Reynolds of Planning staff submitted a motion to amend requested by the applicant which adds the language that would permit dwellings for four to six non-related persons within a community unit plan as long as the community unit plan is larger than 10 acres in size.

Reynolds also submitted a letter from Carol and John Brown on behalf of the Landons Neighborhood Association with concerns about the impact of the text amendment on the community at large including such issues as parking, crime and traffic.

Proponents

1. Mike Rierden appeared on behalf of **The Dinerstein Companies**, the applicant. Rierden submitted a copy of the existing § 27.70.020, which allows dwellings for four to six persons not immediately related by blood, marriage or adoption and living as a single housekeeping unit on lots of one acre or more, provided that one off-street parking space is supplied for each person in the housekeeping unit. Therefore, Rierden pointed out that this type of dwelling can be built in the city today if it meets the provisions of this portion of the ordinance. It does not require a community unit plan under the existing regulations. It doesn't even require a special permit at this time. Therefore, there is no review by the City, no notification to property owners or neighbors and no input by the neighborhoods. The proposed amendment to § 27.70.020 permits dwellings for four to six persons not related only in a community unit plan through the special permit process. The minimum lot area per dwelling would be based on the underlying zoning and the number of occupants. The density that would be permitted is similar to what would be allowed under the base zoning or a community unit plan.

The proposed amendment to § 27.65.030, which is the section containing the procedures for a community unit plan, adds "dwellings for non-related persons" to the list of housing types permissible in a community unit plan which is granted through the special permit process. This type of dwelling will no longer be allowed anywhere other than inside a community unit plan.

The proposed amendment to § 27.67.065 requires one off-street parking stall per occupant. When Rierden met with the Mayor's Neighborhood Roundtable, one of the concerns was the parking requirements. The Browns are concerned that maybe 20 parking stalls is not enough for guests. Rierden advised that an amendment to the special permit at 1st & Charleston will be submitted today revising the site plan to show 75 parking stalls for guests (instead of 20). Currently, under the base R-3 zoning, 2 parking stalls are required per dwelling unit and 2 per dwelling unit under a community unit plan. Therefore, this amendment will increase the parking requirements almost two-fold. The parking requirements cannot be adjusted by the City Council. Rierden also suggested that not all of the occupants will have cars.

Rierden recalled that there was some concern about density at the last meeting. He clarified that this text amendment does not increase the density.

Rierden then discussed his proposed amendment to § 27.70.020 to require that the property be larger than 10 acres. The reason for this proposed amendment is because of the concern raised at the Mayor's Neighborhood Roundtable as to whether this type of development could be placed in existing neighborhoods. The original proposal would allow it in a community unit plan of at least 1-acre. With 10 acres it should take care of those concerns.

Newman believes that the concerns of neighborhoods are valid and she appreciates the proposed 10 acre minimum. Rierden believes that 10 acres would equate to 4 square blocks in an existing neighborhood. Therefore, it is unlikely that such a development would occur in an older existing neighborhood.

Carlson wondered whether there is any potential for language to make the 10 acre intent clear. Rierden suggested that he could meet with staff and come up with some refinement between now and when this is scheduled at City Council. Carlson just wants the ordinance to reflect the intention, i.e. preservation of and protection for existing neighborhoods.

Steward asked for clarification of the "intent". Is the intention to not have student housing in existing neighborhoods? Carlson asked Rierden to explain his sense of the intent of the amendment to 10 acres. Rierden believes the intent is to build in protections with the 10 acres and the requirement for a community unit plan. It requires 2,000 sq. ft. per bedroom and one parking stall for each occupant. We have done everything we possibly can. Rierden would not be excited about saying "no student housing" because of the Fair Housing Act. Carlson suggested that the intention is not to bar student housing but to make sure that it is comparable in scale and aesthetics to what exists.

Carlson stated that he is trying to keep the text amendment separate from the associated project at 1st & Charleston. Therefore, what is the call and need for this text amendment? Are we accomplishing that or opening doors to something we do not want to happen or denying something that we do want to happen? Rierden believes there is a need for student housing; he believes that with the 10 acre minimum, it eliminates the concerns which the existing neighborhoods might have. Carlson noted that the city has had the three unrelated persons rule for a long time and he believes it has served well. He does believe that we may need to find creative ways in higher density areas to find additional housing opportunity so he is trying to get a sense of the call for that need.

Schwinn commented that a few years ago he was involved in building homes for the Associated Retired Citizens and many were located in R-1 zoning with upwards of 6 to 8 non-related people within those homes. Has there been a change in what we do? Reynolds explained that the ARC housing would fall under the group home definition, which is a conditional use in residential zoning districts and separate from a dwelling for non-related persons.

Steward expressed his concern that the CUP requirement is going to restrict larger community wide ramifications as strong as the University dwelling community is in this city. Are we putting in a restriction that is going to perhaps restrict future development opportunities for associated housing, or is it a requirement on our institution (UNL) that is unusual and new without them particularly being aware? He is concerned and unsure about the community-

wide ramifications of this text change. Reynolds suggested that as far as the benefits of this proposed text, it does provide an additional housing option for the people of Lincoln that did not previously exist. We had dwellings for non-related persons, but they had to be on lots of 1 acre or more in size. With this text amendment, we can incorporate those dwellings into a CUP in areas which might not otherwise support them. Someone doing a fairly large development in one of the newer areas, generally a CUP, will have more than 10 acres. This type of housing could be incorporated into those newer neighborhoods. The staff's initial recommendation was that it be approved without the 10-acre minimum. The parking is greater than required in any other residential district and the overall density is less than what is permitted in the base zoning district.

Hunter noted that she had made a request to Planning for some clarification as to why this project could not be approved as a special permit for this use as a spot zone rather than changing the text. Why can't we take a special use that is appropriate for the area and make an exception to create this project in the location and not have an effect city-wide with the text amendment? Reynolds explained that the text proposes that dwellings for four to six non-related persons be permitted within a CUP with conditions. Currently, Lincoln has a definition of "family" that says only three unrelated persons can live in the same dwelling unit. That does not change. But in a CUP, which is a type of special permit, you would be permitted to have four to six non-related persons. If they wanted to proceed under the current zoning, they would have to show a maximum of three bedrooms for three non-related people, versus four bedrooms and four non-related persons. "There is no way to get there from here."

Carlson discussed community impact. Is it positive or negative? This is a text amendment. He wants more discussion and answer for the community implications other than the applicant's client. He needs to decide if this text amendment is good for the community. It provides more housing opportunities, but he is looking for more information. Reynolds observed that the Comprehensive Plan includes a goal of having a diverse array of housing options; encourage efficient use of urban areas by providing high density residential uses; the public policy consideration section of the Comprehensive Plan talks about finding a place "...for the country estate and the city efficiency apartment, for the small private single family home and the large apartment suite, for the most affordable and most expensive dwelling unit, for completely independent living and for living within the care of others. Provision of the broadest range of housing options throughout the community improves the quality of life in the whole community." Reynolds believes that this proposed text amendment accomplishes that goal by adding a housing option on lots that are 1 acre or more.

Carlson stated that he is not looking to deny student housing. He is thinking about the house that ends up with 8-10 unrelated people that creates an unhealthy environment and negative impact on surrounding properties. He wants to decide whether we can create an opportunity to do something we want to do without creating a negative impact. He thinks there is a value to a higher density housing type, student related or not.

Hunter suggested that maybe it is not so much designating where it can happen as to designating where it cannot happen.

Schwinn believes this text amendment makes it more restrictive.

2. Rich Wiese appeared on behalf of the **West O Area Business Association**, in support. This language came up at the Mayor's Neighborhood Roundtable meeting and there was some good discussion. The West O Area Business Association supports what is in front of the Commission with the changes that have been proposed. The Association has worked with Doc White for 3 ½ years to get the property to where we are today. It is a good development and it will work good for the City, the University and the neighborhood. He is on another board that is working towards trails being developed along Salt Creek, crossing Sun Valley and up to Oak Lake. This will allow riding a bicycle to the University.

Opposition

1. Danny Walker testified in opposition. There is some discussion of what can and cannot be done. The Commission must keep in mind that the Comprehensive Plan can be amended and changed at any time. We're talking about amendments. In regard to the 10 acre requirement, that's fine, except all that does is create additional stormwater runoff. As far as it being too restrictive for University residential properties, he believes it should call priority to the existing neighborhoods instead of to the transient students. Walker is opposed because the changes could be utilized in unfavorable locations such as older neighborhoods. It is very questionable that this 10-acre restriction would cover a situation such as rundown properties in the floodplain. State and Federal law prohibits landlords from showing discrimination toward renters. Anyone could take advantage of the text amendment. We could wind up with anything and everything residing in those properties.

2. Glenn Cekal testified in opposition. It seems like the city is pushing this for some unknown reason. There has been a lot of fantasy terms used, i.e. options, traditional living. They can have options to do things that are wrong or considered incorrect. The City of Lincoln cannot enforce proper conduct and living standards in the older sections of the City. The point is this: how are we going to maintain order in this place? The police cannot maintain order in this city on Saturday nights. We must bear in mind that this cannot be restricted to students. When you get a large group of young and energetic people, you will have to call out the National Guard to slow that thing down. This particular application is in an extremely hazardous area. He does not want this type of development to be able to occur all over town. There are health

problems as far as location and getting this type of configuration of people together. He thinks the idea stinks. It is designed to make money and it has been wrapped in a very pretty package such as “options of living”. The truth has been lost. The problem is management. You can’t manage a place like this effectively.

3. Gary Hejl, 1745 Jefferson Avenue, member and representative of Antelope Park Neighborhood Association, testified in opposition. They are concerned how this change could affect their neighborhood and other established neighborhoods in the city. It appears that the proposal intended as student housing should probably be addressed by the University. It appears that this type of concentration of unrelated persons in this type of structure would be detrimental to the city. Great care should be used in changing this code, especially as it affects established neighborhoods and future building. The Association is concerned about what could happen and what has happened in smaller buildings in the city. Concentration of more than 500 people would be quite a change in magnitude of what can happen. If this were student housing, they would like to see the University create more student housing. If it is multi-unit dwellings, the Commission should address the need in the community when considering this text amendment rather than the specific proposed plan.

Carlson asked Hejl whether the 10 acre minimum would change his opinion. Hejl’s response was that even with 10 acres or more, it would not be a wise way to concentrate a population of unrelated people. We need a more social structure rather than single non-related people who are not necessarily students.

Steward pointed out that this can currently happen on 1 acre or less, and it can happen without any notification to you or your neighborhood association. Would you prefer it being as is or would you prefer a 10-acre condition? Hejl responded that “as is” is not acceptable in certain situations and to increase that size and magnitude does not seem wise. The ramifications of this concentration have not been explored. He believes the results would be very detrimental to the community.

4. Darren Adams, student at UNL, testified in opposition. He is not experienced in the language but from his personal experience he agrees that there are concerns about expanding the number of unrelated occupants. He used to live near some large apartment complexes where there would be parties every Friday night. There have been situation where accidents occur at these parties and the University ends up being sued.

Staff questions

Newman sought some clarification. If The Dinerstein Companies wanted to go into this area today and put up housing with 3-bedroom units, they could do that without changing the text. Reynolds agreed. Thus, Newman noted that they could put in 550-560 bedrooms with less amount of parking spaces required. Reynolds concurred.

Steward asked staff to return to the 1-acre minimum and speculate the impact of a CUP without the 10-acre minimum. Reynolds noted that to be the change of zone as originally proposed and recommended for approval. It provides alternative housing while maintaining approximately the same density in terms of number of persons and providing more parking than required in other zoning districts. It could be accomplished on lots that are at least 1 acre in size. Steward pointed out that what we achieve with that change and keeping the 1-acre minimum is the requirement for public notice and hearing. Reynolds concurred. Whatever version that gets adopted would require that every single one of these dwellings for non-related persons go through a public hearing process through Planning Commission and City Council.

Carlson also clarified that it would be 4-6 non-related persons in a single dwelling unit on one acre or more. Reynolds clarified that this text amendment provides guidelines for the amount of density based on the underlying zoning.

Response by the Applicant

Rierden reminded the Commission that we are taking a situation that could happen in existing neighborhoods today, without public hearing and staff review, that have an acre of land. This improves the existing requirements. It also implements a stronger, more restrictive parking regulation with the same density.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Steward moved to approve the text amendment as recommended by staff. This does not include the 10-acre requirement. The motion was seconded by Schwinn.

Steward commented that this text amendment, in his opinion, allows a reasonable use of otherwise very difficult land. However, in other locations around the city, with a 10-acre requirement, it moves a development strategy for housing to very large concentrations. He believes that neighborhoods are best invigorated by mixed use and mixed characteristics. He would not like to see moving away from the opportunity for smaller developments. But he is in favor of this opportunity for public recognition and public review, which we have not had before.

Hunter stated that she cannot support this without the 10-acre requirement. This city has got manageable traffic problems at this point. While it may be desirable in terms of not creating sprawl, this density also enhances another problem—creating traffic problems and parking

problems in areas where they already exist. She would prefer not to vote on this at all. While density may be a desired effect in certain areas, she believes this may create a bigger problem in another area which is not even feasible.

Carlson commented that a well-designed density can relieve traffic problems, but he does not know that this text amendment is calling for a design standard that talks about how that density will be accommodated. He is interested in finding creative well-designed ways to accomplish the density in the proper place. We do have the current definition of family which serves us well in a lot of circumstances. Does this text amendment provide well-designed density? It is not clear to him that it does and it may. But, does this open up Pandora's box and destroy neighborhoods? He does not think that it does. With the 10-acres he is more sure that it does not. We have the potential to do something good and we should mitigate that potential to the extent that we can.

Taylor likes the idea of a use of this land and he likes what the applicant is doing and he thinks the engineering and everything is being done very well. But bottom line, when we talk in terms of traffic, we are really talking about people. When talking about a text amendment, it really ends up with a concern about the populous of Lincoln. He has a concern about the type of clientele that we're seeking to serve in those areas. It is difficult to support something that he believes may potentially be a problem for the citizenry of this community.

Schwinn will support the amendment as it is with the one acre. It could equate to 42,000 sq. ft. and that's a large piece of land. Plus, the number of occupants is limited by the zoning. Even in the R-2 and R-3 on 1 acre, they could only have a maximum of 21 people. He believes the 1-acre gives the development community a greater flexibility in assembling parcels. 10 acres would tear up six blocks in an established neighborhood and that would be an impact to a neighborhood.

Motion to approve the staff recommendation with one-acre failed 4-4: Steward, Duvall, Bills and Schwinn voting 'yes'; Carlson, Hunter, Taylor and Newman voting 'no'; Krieser absent.

Steward left at this point in the meeting for another commitment.

Following a 10-minute break, Hunter made a motion to approve the text amendment with the minimum 10-acre requirement as proposed by the applicant, seconded by Duvall.

Hunter stated that she was extremely moved by the student that spoke in opposition. Every once in a while we keep hearing "student housing". This text amendment does not apply just to student housing. You have to look at a project like this which is well designed and probably is a need in our community and it provides the types of varieties of housing that will provide uses and facilities for all kinds of people. She believes it makes a lot of sense because it

does provide a density that is affordable for students. But, there has to be some protection for neighborhoods. The concept of gathering up 10 acres of a residential property inside Lincoln and converting it to this type of use is not going to happen. The 10-acre requirement gives that comfort zone and each application would be considered on a case-by-case basis. This is a situation that is coming before the Planning Commission at this time, but in the future she believes the Commission is going to be seeing things like gated communities—another type of housing that some people like. It is important to create housing appropriate for a lot of different kinds of people. She believes this is a good move.

Taylor stated that by getting more information over the break and with the idea that we want to make sure that we have assurances that this is something that can be manageable, he believes the idea of having 10 acres and looking at it on a case-by-case basis is acceptable. He has a lot of confidence in the engineering and the information he has received from The Dinerstein Companies. Therefore, if we can keep it in accordance to what they have proposed, he thinks we can come more to an agreement and he can come more closely to supporting it.

Newman stated that the key for her is that it is dwellings of 4-6 non-related people only under a CUP and only applicable to 10 acres or more. This is what was talked about at the Mayor's Neighborhood Roundtable and the major fear was that there would not be smaller blocks where something could be done that would drastically change a neighborhood. If the Commission is incorrect in these assumptions, she is sure the language will be cleaned up at City Council. She will vote in favor in the hopes that if there is a loophole that does not protect the neighborhoods, the City Council will address it.

Motion for approval, with the 10-acre requirement, carried 7-0: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Steward and Krieser absent.

CHANGE OF ZONE NO. 3329

FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL

and

SPECIAL PERMIT NO. 1928

OAK CREEK COMMUNITY UNIT PLAN,

ON PROPERTY GENERALLY LOCATED

AT NO. 1ST AND CHARLESTON STREETS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 17, 2001

Members present: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn; Krieser and Steward absent.

Proponents

1. Michael Rierden appeared on behalf of the applicant. He reported that the applicant has met with the Mayor's office and the Mayor's Neighborhood Roundtable. The Mayor has stated his support for the project. Rierden has also visited with the North Bottoms Neighborhood Association. Rierden acknowledged receipt of the letter from Carol Brown expressing concern about the parking for 20 guests. The applicant has agreed to amend the site plan to increase the guest parking to 75 stalls. Rierden also clarified that this application will not affect the BMX track which is owned by the City and run by the Parks Department.

2. Paula Barrerra of The Dinerstein Companies, the applicant, testified in support. The Dinerstein Companies will be the owner and developer of this project. For the last six years they have been geared toward building in university cities where there has been a need for housing for students. The property is geared towards students but she acknowledged that they cannot discriminate. The property is rented by the bedroom. Leases are guaranteed by the parents, which gives more control over the tenant. Three violations of the lease agreement is eviction. Barrerra could only remember one time in the 27 properties where they have leased to someone other than a student. This happened to be on a short term basis for a displaced family due to a flood.

The Dinerstein Companies has a strong management team that is trained to deal with special issues. Their standing operating procedures book is 3 ½ inches thick. They attempt to hire local people to staff the complex. There will be nine employees on the site. They will be trained in the policies and procedures that work best for this type of housing. The housing will be co-ed, the same as on any other college campus or apartment complex. Tenants are allowed to select their own roommates or the company will help match them up. To make the properties more secure, a licensed law officer is hired to live on the site. The property is patrolled on a regular basis by vehicle and on foot. After office hours, any calls going to the answering service are directed to the courtesy officer and are dealt with immediately. It is important to provide a safe environment for the students. The Dinerstein Companies is spending 15 million dollars on this project and the goal is to maintain and keep it up. They offer a shuttle bus from the property to the campus every 15-30 minutes during morning and afternoon classes. They also provide on-site parking for all residents and try to accommodate as many guests as possible. They do enforce local towing regulations. The residents are provided with a parking sticker and anyone parking on the property without a sticker is towed. They also enforce residency numbers-- one person per bedroom--by the lease agreement. The room size is only big enough to accommodate one person comfortably. The units are furnished with a desk and computer hookup with Internet access.

Newman inquired as to the age of the oldest complex. Barrerra referred to their first property at Texas A&M. That same year they built in Auburn, AL and Baton Rouge, LA. Five properties were built in 1996-97. Newman was seeking to find a commitment to keeping these going. Barrerra stated that The Dinerstein Companies owns, operates and maintains each facility.

Hunter asked about their experience with security. Barrerra indicated that it is to the company's advantage to have a courtesy officer on-site. They do not tolerate under-age drinking. The experience has been that their biggest advertising is the students themselves.

Duvall inquired whether there is entertainment or supervised activities provided by the complex. Barrerra acknowledged that they do have a sand volleyball court, basketball court, pool, hot tub, and equipped exercise room. The management staff puts on different parties and activities for the students, but they are usually seasonal.

Taylor confirmed with Barrerra that this is completely backed up by parents and the parents must sign the lease. No one can take a unit there without parental permission. Barrerra clarified that if a tenant is over age 21 and has established credit, they can sign their own lease. Anyone under the age of 21 has to have a parent or guardian guarantee their rent. There has only been one incidence in 27 properties where they have ever leased to anyone other than a student. The applicant believes it is a stricter environment than living in any college dormitory. Every tenant must fill out an application and is screened. On-site parking is provided for all residents and this site will have 75 guest parking spaces, with a total of 664 parking stalls on the site. This site provides a separate living unit for the courtesy officer.

Barrerra went on to state that this year The Dinerstein Companies opened several properties in communities with college enrollments of 10,000 students or more, which is one of their criteria. The 4 occupants per unit allows them to meet the rental requirements of \$275-300 per occupant.

Hunter sought clarification of the lease violations. Barrerra stated that lease violations include under-age drinking, keeping someone in your room you are not supposed to have over an extended period, partying, disturbing the peace, and non-payment of rent. Drug use is immediate eviction.

3. Ron Ross of Ross Engineering, Inc. testified on behalf of the applicant. The applicant has dealt with the complex environmental issues on this site, which was the requirement of the lender on this project. The developer and its representatives have to be accountable and be responsible for the projects they represent. What is really frustrating is when people come forward and portray with their dialogue that they understand and have researched all the issues when they have not. Ross started work on this project the end of January and they have put a lot of heart and soul into this and have dealt with many, many issues.

Ross has been extremely impressed with The Dinerstein Companies. You have to take a look at their track record. In a short amount of time, they have constructed 27 projects. Under construction now are Greenville, NC; Cedar Falls, IA; Laramie, WY; Austin, TX; and Bowling Green, NC, among others. Others being planned include Lincoln, NE; Charlottesville, WV; Lubbock, TX; and Charlotte, NC, among others. Some of these have gone through the same exercise as the City of Lincoln. They are very, very successful. He wholeheartedly supports this project--it is in the right neck of the woods and it is not surrounded by neighborhood groups.

This project is 38 acres of land zoned I-1, with a change of zone request to R-3, located generally at 1st and Charleston. There are two tracts of land. The major tract being developed is 22 acres. To the west between two railroad tracks are 16.5 acres of 35% wetlands. The rest of the property is being acquired from Doc White. They will be excavating the dirt and bringing it into the site for fill and turning it into wetlands and deeding a substantial portion to the NRD. They would have deeded all of the 16.5 acre tract, but Planning wants them to keep enough density to support the 157 units and the 589 bedrooms. About 11 acres will be deeded to the NRD plus a conservation easement. The western 1/3 is where a pond will be built. There will be a clubhouse, multi-purpose court, volleyball, shuttle bus, mail kiosk, and other activities.

A key issue is the parking. A typical conventional apartment complex requires 2 parking spaces per dwelling unit. Ross suspects the average in Lincoln might be 2.5 bedrooms, with 2 parking spaces. This project provides one parking space per bedroom and another 75 parking stalls for guests as a result of the Mayor's Neighborhood Roundtable meeting. The revised site plan which adds more parking for guests will be resubmitted.

Ross referred to the public improvements which are a part of this project. Charleston Street is partially concrete and partially brick. The applicant is requesting a paving district in conjunction with the developer to the south. The project also needs an 8" water main for about 1,000 ft., which will be done either under an Executive Order or a district. If they can gain support of the developer to the north, they would prefer to do the water main by Executive Order.

Ross acknowledged that this is being developed in a floodplain. There is going to be new criteria for floodplain development coming forward in the next 6-9 months. Ross submitted that this developer has gone a long ways toward adapting that criteria. There will be an average of 3-4' of fill under the units. Within the entire area, there are 57,000 yards of fill required. Only 13,000 yards will be brought in from off-site. The rest comes from the pond that is being built and the existing area within the railroad tracks. If you spread that 13,000 yards over the entire area, it amounts to 0.21 feet spread out over the whole site. Planning and Public Works have supported this concept.

Ross also acknowledged that this project is in an area of wetlands. There are four isolated wetlands of about 6.5 acres and this project does not touch one of them. The site has been refined several times to work around it. This project creates more wetlands.

Ross advised that the majority of the developer's time, effort and money was spent on the area of the old landfill. They did an electromagnetic study and they know where the landfill is not. That is the property they are purchasing. They are buying only land outside the landfill. The buildings will be vented even if there is no methane gas.

With regard to the change of zone to R-3, Ross advised that there is one tract that is not being purchased which will remain in Doc White's possession. It is a saline wetland and will stay there at least with a conservation easement.

Ross noted that the Lincoln saline wetlands center is located to the west of this site. This developer will deed at least 11 of the 16.5 acres to expand that nature center. There will also be enhanced wetlands created by this developer.

Ross noted that the staff initially thought this probably was not the right tract of ground because it was all zoned I-1. The developer went to work to figure out how to go about this. Since that time, the recommendation in the staff report is now deferral for the Comprehensive Plan update or a subarea plan—not denial. One of the options we were given to allow us to move forward are the conditions of approval and Ross agrees with the conditions of approval.

With regard to the Land Use Plan, Ross stated that this developer has been working extensively with the developer to the east. A change of zone to H-3 is being submitted on that property. The developer is also working with two neighbors to the north and anticipates bringing in a proposed subarea plan. This area includes the 38 acres, 15 acres of Chameleon property, and 6.5 acres to the north, north of Charleston. They are also working with Mark Becker who has 4.9 acres to the south, which will be shown as industrial in the subarea plan just to be allowed the 15' setback; however, the property will be developed in the future for commercial uses—not high density industrial. The industrial setting is being changed to highway commercial in the subarea plan with more upscale types of uses.

Ross advised that the Mayor has indicated that he sees this as a redeveloping revitalizing area. With the realignment of Sun Valley Blvd., the 15 million dollar Dinerstein project to the west, and commercial upscale uses in a subarea plan, it will really change the character.

Newman expressed that her biggest concern, as raised by the Health Department comments, is getting those kids out of there if anything does happen. You only have one access. Ross advised that Sun Valley Blvd. is being looked at by the City and Department of Roads for realignment to get people to the ball complex. Instead of going straight north, it is curving back around the city tow lot and will link into the intersection of 1st & Charleston. There will be a

future public street which links to the entrance into the ballfield complex. We also have another future street system—Charleston is being widened to 33'. With that widening and the future street network in the area, there will be alternate access within the area. Ross also pointed out that the neighbor to the north is the mini-storage area. There is a private driveway system through the mini-storage area that will come into the back door of this development on the north side of Charleston, providing another alternate entrance for emergency vehicles.

Carlson asked for further walk-through on the site plan. Ross displayed the map and commented that none of the Dinerstein project is within that old landfill property. West Charleston is the entrance into the complex. It is necessary to start a surcharge and move dirt in this fall. Come spring, they will be ready to build and will have to have fire protection. They anticipate building the water main in January or February so that it is built prior to breaking ground. An EO process is much, much faster where private funds are put up, it is designed and built. A district would take six months. This developer, along with the developer to the south and hopefully the developer to the north, will pay for the water main.

Carlson wondered whether there has been any discussion about commercial zoning to the east. Ross noted that the 50 acres to the east has 2.2 acres of wetlands. The whole premise in dealing with them is that there is landfill there. The tow lot has venting of methane gas. The smaller scale upscale uses are more conducive to development in this area. We see this as smaller users—not the larger industrial type uses. There will be no vehicular traffic across the wetlands.

Rierden then proceeded with his testimony and proposed amendments to the conditions of approval:

- 1.2.7 Provide grading and drainage over the entire area covered by the Community Unit Plan, except existing wetlands located in the 16.5 acre tract which will not be disturbed, as requested by the Department of Public Works & Utilities.
- 1.2.10 Revise the plans to show the connection to the trail system on the south side of Oak Creek and provide a level plane for the trail system to go through in the area abutting the property.
- 1.2.21 Provide parking lot screening which meets design standards along the east property line, except where adjacent to existing wetlands.
- 2. This approval permits ~~456~~ 157 dwelling units, ~~96~~ 120 of which are dwellings for non-related persons with ~~384~~ 480 occupants, and waives the following:

Support

1. **Rich Wiese** testified on his own behalf in support. He lives in this area and three owners purchased the saline wetlands so that undesirable homes would not be built on that property. Through the Department of Interior Foundation they received a \$75,000 grant to protect the saline wetlands. They purchased the property and deeded it to the NRD. With the Doc White property deeded to the NRD, it will complete the preservation of those saline wetlands.

2. **Rick Wiese** also testified in support on behalf of the **West “O” Area Business Association**. This is a good location for this project.

Opposition

1. **Danny Walker** testified in opposition. He submitted pictures of the Oak Creek levee which he believes to be relevant. A major portion of the stormwater runoff from this project is going to be shuffled over to Oak Creek. There is “home base storage” located right on the edge of Oak Creek. The pictures showed erosion that has taken place on the south side of the levee, the erosion being at least 3-5 feet deep. The pictures also showed fill. What is this development going to do to no net rise? No one has discussed this issue. He believes everything is on the fast track because of the regulations forthcoming on development in the floodplain. There is a tremendous amount of fill out there already. It is very easy to get a fill permit.

In addition, Walker pointed out that the entire project lies within the 100 year floodplain which will require fill and it is irrelevant as to where the fill is obtained. He appreciates the additional parking which the applicant has agreed to provide, but we’re still putting hard surface in floodplain area on top of dirt. Evidently the project could not meet no net rise provisions. Portions of the complex are located in the proximity of railroad tracks utilized to transport hazardous materials. The proposed development is in proximity of the city of Lincoln tow lot which is also located within the 100 year floodplain. The tow lot only has provisions for only 20 tie-downs to accommodate 400-600 vehicles in the event of a major flood. This is an additional risk to the proposed development. A major portion of the stormwater runoff from the proposal will drain into Oak Creek which currently handles runoff from home base storage at 1701 No. 1st and the saline wetlands at 1st & Cornhusker. There is drainage into the saline wetlands from Cornhusker Highway.

Walker asked the Commission to keep in mind the fact that Oak Creek drains into Salt Creek which is a major flood threat as a result of very poor planning. How will vehicles enter in the event of a major flood? This is a very high risk area because of what was dumped into that landfill. There is a large amount of fill being placed in surrounding areas which will add to the risk of flooding. What is proposed to be built in the other fill areas? Will it be compatible with the proposed development?

Walker attended the Mayor's Neighborhood Roundtable meeting. He takes exception to the fact the way the Mayor stepped forward and endorsed this project. That is the purpose of the Planning Commission and City Council—not the Mayor. It would seem that there might be special interests. He believes the Mayor's conduct is questionable.

2. Richard Halvorsen testified in opposition. He questions the need for this project. The student population at UNL has been decreasing. There is a 2% increase this year, but that was mostly in the upper class areas. The University has taken two wings of their student housing and converted them to classrooms. Niehardt Hall is now half classroom use. If there is such a need for housing, why are they converting the housing on campus into classroom? Halvorsen also does not see too many students attracted to a 12-month lease. Halvorsen's main concern is building in an industrial area. How are we going to get these people out? We have no idea what might be built in the adjacent industrial areas in the future. Plumes of toxic chemicals can cover large amounts of areas and travel a pretty far distance.

Staff Questions

Duvall asked staff to respond to the amendments to the conditions proposed by the applicant. Reynolds agreed with the proposed amendments; however, staff is still recommending deferral. The change from 156 to 157 units includes the caretaker unit.

Carlson asked staff to show the trail connection. Reynolds displayed the map and explained that there is a proposed trail connection along the south side of West Charleston Street to connect up to the Oak Creek area.

Carlson asked staff to talk about the erosion control required. Reynolds advised that there are standards for erosion control set forth in the design standards which must be complied with. Public Works is responsible for the supervision of the grading plan. There are also requirements by the NRD.

Carlson then inquired about the waiver of stormwater retention/detention. Reynolds stated that Public Works noted in their report that because of the work they were doing in constructing the additional pond area, they did not need to meet the strict standards of stormwater retention/detention. Dennis Bartels of Public Works clarified that all of the runoff from the fill that was proposed in the area drains to the existing wetlands and pond that are being enlarged on the west side of the project, which eventually outlets through Oak Creek, so they are providing the typical benefits of stormwater detention which slows the water down before it discharges into Oak Creek. He does not believe there is a need to go through the calculations to match the flow requirements. He believes it comes close to meeting the requirements and does meet the intent. The detention requirements do not require them to look at the overall effects on Oak Creek. The outlets into the Creek will have to be approved by the NRD. Bartels was comfortable that this project will control the erosion that might occur.

Hunter asked the staff to address the concern about ingress and egress in case of a flood situation or evacuation. Bartels stated that he also raised this concern in his report. Charleston is below the 100-year flood level. There would be warning capabilities but if you were trapped there during the flood it does not appear that there would be street access to get out of this complex. Street grades by our adopted standards can be 1' below the 50-year design storm.

Carlson clarified that the staff is still recommending deferral. Reynolds concurred. He also advised that the Planning Department did receive a letter from Ross Engineering proposing a subarea plan or an amendment to the upcoming Comprehensive Plan. The deadline for submittals for the new Comprehensive Plan is this Friday, October 19, 2001.

Taylor asked staff to explain the problem if the application is not deferred. Reynolds stated that the primary concerns are outlined in the staff report and they have to do with the I-1 zoning of the properties to the east and north, which are shown as industrial in the Comprehensive Plan. There are any number of uses in the I-1 district that are incompatible with residential that could be built by right without public hearing. Taylor inquired whether there is anything the Commission can do to move this project forward that would provide staff with the safeguards the staff needs in the future because of the timeframe which this development is working within. Reynolds reiterated that the primary concern is the zoning on the adjacent property. The Commission does not have the ability to change that zoning at this time.

Schwinn asked whether the staff assumes that between now and the time this reaches City Council there will be some sort of subarea plan submittal. Reynolds indicated that the applicant has stated that they intend to get the subarea plan in by Friday; however, we do not have an application submitted at this time.

Taylor asked if there is any way to send this project forward and have safeguards regarding the things that have not been done. Rick Peo, City Law Department, stated that the Planning Commission has no control on the uses on the abutting property at this time. The property is zoned I-1 and an I-1 use can be developed by right. The issue is the risk and likelihood of that happening. Unless there is a change of zone to rezone the abutting property we don't have any effective control over what might be built adjacent to this use.

Schwinn believes that H-3 is compatible with residential. Peo concurred, if the other properties are later rezoned and nothing is built in the interim.

Carlson asked whether the staff has a time recommendation associated with the deferral. Reynolds advised that the time recommendation is that this should be reviewed in the larger setting and the forum to do that is at the Comprehensive Plan level. This application should be deferred until such time as it can be reviewed through the Comprehensive Plan. In terms of timing now, that would mean submitting documents to the Comprehensive Plan Committee by Friday, October 19th, and having their review for potential inclusion in the 2025

Comprehensive Plan, which effectively is a deferral until the 2025 Comprehensive Plan is approved or a subarea plan is approved. The Department goal is to have the 2025 Comprehensive Plan before the Planning Commission in January, 2002.

Carlson asked if it is necessary to have a full subarea plan. Reynolds indicated that there is a different process for subarea plans. This area is nicely bounded by Oak Creek, the railroad tracks, Sun Valley Blvd. and Hwy 6, and could constitute a subarea; however, right now is the opportunity to look at it with the Comprehensive Plan and because of the time commitment that the Comprehensive Plan requires, that is probably the best.

Response by the Applicant

Rierden addressed the timing of this project. It is critical. The developer respects the Planning staff's recommendation of deferral and it came as no surprise, but this project cannot wait for the Land Use Plan to be changed in the Comprehensive Plan. It is necessary to have the permits and close on the sale of property in November. Surcharge will take 60-90 days, which takes us into February. Construction starts and takes us to into March or April of 2002. He urged that the Commission approve this project and move it forward. The other property owners will be coming forward. Ross has authority to submit that change of zone. They will also be submitting a proposed subarea plan. Out of 48 acres, this immediate project is 12 acres. The rest of it is open space and wetlands. The developer had hoped to be through this process by mid-October.

Ross proceeded to rebut the items that the first speaker in opposition commented upon. This project does not impact Oak Creek. They have requested a waiver to detention because the NRD and Public Works do not want us to provide 100-year detention storage and release that water at a slower rate downstream. Doc White has not experienced a flood situation in that area. The developer will have a floodplain management document in their operations manual. Unfortunately, hazardous waste goes through the rest of our community. There are several approved fill permits, one of which is underway. This project will bring in 13,000 yards of fill for the entire project.

As far as the timeframe, Ross pointed out that the timing is critical and we are now down to the end of our construction season. He urged the Commission to move this project along and let them develop a good project for the city of Lincoln.

Public hearing was closed.

CHANGE OF ZONE NO. 3329

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Duvall moved approval, seconded by Taylor.

Duvall believes it is time to move ahead.

Schwinn commented that this is an evolving area and in that particular spot we have a very well used park and very popular city park, and a very popular baseball diamond which will be used about 6 months out of the year. It is an area prime to be moved away from industrial uses and into more compatible commercial uses. He will vote in support. He understands that they need to move forward and this does go to the City Council. If there are problems between now and then, the City Council will be the catchall.

Taylor expressed that he does have some concerns. He is pretty confident in The Dinerstein Companies and with the engineer. Therefore, he is really for this project going forward. There are similar situations that don't look as clearly defined as this that he would not support.

Carlson agreed that it is a positive if this area were to move from industrial to some other type of use, i.e. commercial. He is not satisfied with the concept of open-ended deferral because it sounds like there is a coordinated activity here. He is inclined to vote for the change of zone, regardless of the use because it is a better change.

Hunter stated that she will vote in favor; however, she is not ever going to be comfortable with changing zoning in the hopes that it is all going to get changed appropriately. In some ways she thinks that doing this almost forces those other properties to become rezoned.

Motion for approval carried 7-0: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser and Steward absent.

SPECIAL PERMIT NO. 1928

OAK CREEK COMMUNITY UNIT PLAN

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Duvall moved approval, with conditions, with the amendments as requested by the applicant, seconded by Hunter.

Newman stated that she really wants to vote for this but there are two issues. She knows we need alternative housing for students. She thinks it is a wonderful project and the developer has been responsible. But she is still bothered by the fact that there is only one access point in an area where things can happen, i.e. floods and hazardous materials on the railroad. The

second part of the issue is, where do they belong? This applicant has tried to be responsible by putting this project someplace where it will not impact the neighborhood, but the access really bothers and she is voting in opposition based on the one access point.

Motion for conditional approval, with amendments, carried 6-1: Carlson, Hunter, Taylor, Duvall, Bills and Schwinn voting 'yes'; Newman voting 'no'; Steward and Krieser absent.

CHANGE OF ZONE NO. 3340

FROM R-1 RESIDENTIAL TO B-1 LOCAL BUSINESS

ON PROPERTY GENERALLY LOCATED AT

SO. 27TH AND WOODS BOULEVARD.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Members present: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn; Krieser and Steward absent.

Schwinn requested permission of the Commission to ask a question of the applicant. Rick Peo of Law Department agreed that the applicant could be asked a follow-up question, but no additional testimony can be introduced since the public hearing has been closed.

Mark Hunzeker, the applicant's representative, approached the Commission. Schwinn asked whether the applicant would rather have this application moved forward if the recommendation is denial or have it held over at the Planning Commission level if there is not a majority vote. Hunzeker stated that he would prefer a majority vote.

Newman moved denial, seconded by Carlson and failed 4-3: Carlson, Hunter, Taylor and Newman voting 'yes'; Duvall, Bills and Schwinn voting 'no'; Krieser and Steward absent.

Duvall moved approval of change of zone as requested by the applicant. Motion failed for lack of a second.

Duvall moved approval of the staff recommendation, seconded by Bills and failed 3-4: Duvall, Bills and Schwinn voting 'yes'; Carlson, Hunter, Taylor and Newman voting 'no'; Krieser and Steward absent.

This application is held over for administrative action on October 31, 2001. Public hearing is closed.

There being no further business, the meeting was adjourned at 5:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 31, 2001.